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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Federal-State Joint Board on Universal Service	CC Docket No. 96-45

CONSOLIDATED COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE ON PETITIONS FOR RECONSIDERATION

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SUMMARY

The Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee") opposes the Petition for Reconsideration filed by US West, Inc., to the extent that it advocates that competitive local exchange carriers ("CLECs") should be eligible for universal service support only indirectly, in the form of lower negotiated rates for unbundled network elements, the price of which would be subsidized by universal service support flowing directly to the incumbent local exchange carriers ("ILECs") providing the facilities. CLECs and ILECs should be eligible for universal service support on the same basis. If ILECs receive universal service support on a direct, disaggregated basis, then CLECs should be able to receive support on the same basis.

CLECs that provide any of the supported services and meet the other statutory criteria for eligibility should be able to receive universal service support for any supported service they provide. The Ad Hoc Committee opposes the Petition for Reconsideration of the United States Telephone Association ("USTA"), insofar as it advocates that carriers that do not provide supported services on a stand-alone basis should be denied universal service support. USTA's position, if adopted, would inhibit competition by emerging niche providers who may be unable to provide stand-alone universal services upon entering the market, and who would thus be competitively disadvantaged by support mechanisms that subsidize incumbent carriers but not them.

The Ad Hoc Committee supports the argument of AT&T Corp. ("AT&T") and US West that carriers should be required to recover their universal service

contributions in the form of end user surcharges, but it disagrees with the position of AT&T and MCI that these surcharges should be based on each carrier's retail telecommunications revenues. Adoption of an end user surcharge would satisfy the 1996 Act's requirements that support mechanisms be "specific, predictable," and "explicit," and it would make the universal service support system accountable to those who are paying for it -- the ratepayers.

Without a mandatory end user surcharge, ILECs would be able to flow through all but a fraction of their universal service contributions to interexchange carriers ("IXCs") in the form of interstate access charges. On the other hand, CLECs entering the market through total service resale ("TSR"), and not providing interstate access to IXCs, would be unable to flow through their universal service contributions. The competitive imbalance that would result from this scenario would hobble emerging competition and run contrary to the pro-competitive purposes of the 1996 Act.

Finally, the Commission has stated that it will address the issue of ILEC recovery of embedded costs in another proceeding. Any suggestion that it should do so here should be rejected.

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The Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee") submits these Comments on the Petitions for Reconsideration of the *Universal Service* Order[1] filed by the United States Telephone Association ("USTA"), AT&T Corp. ("AT&T"), and US West, Inc. ("US West").

I. UNIVERSAL SERVICE SUPPORT SHOULD BE PROVIDED ON A DIRECT, DISAGGREGATED BASIS TO ANY CARRIER THAT PROVIDES ANY OF THE SUPPORTED SERVICES.

In its *Universal Service* Order, the Commission ruled that "a carrier that offers any of the services designated for universal service support, either in whole or in part, over facilities obtained as unbundled network elements pursuant to Section 251(c)(3) of the Communications Act satisfies the 'own facilities'

[1] *Federal-State Joint Board on Universal Service*, Report and Order, CC Dkt. No. 96-45, FCC 97-157 (released May 8, 1997) ("Order").

requirement of Section 214(e)"[2] and, assuming it satisfies the other criteria for eligibility,[3] will be eligible to receive universal service support. Conversely, the Commission adopted the Joint Board's conclusion "that section 214(e) precludes a carrier that offers the supported services solely through resale from being designated eligible in light of the statutory requirement that a carrier provide universal service, at least in part, over its own facilities."[4] The Commission declined to expand on the statutory eligibility criteria and, in fact, concluded that section 214(e) does not grant it authority to impose additional eligibility criteria.

In their petitions for reconsideration, USTA and US West object to various aspects of the Commission's interpretation of the Act's eligibility criteria. The Ad Hoc Committee opposes the incumbent local exchange carriers ("ILECs") attempts to narrow competitive local exchange carrier ("CLEC") eligibility for universal service, which would unreasonably and unnecessarily limit CLEC strategies for entering the local exchange market. Accordingly, the Commission should reject the Petitions for Reconsideration of USTA and US West insofar as they seek to have the Commission re-define the criteria for carriers to be eligible for universal service support.

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[2] Order at ¶ 128. Section 214(e)(1)(A) provides that a carrier will be eligible to receive universal service support if, among other things, it offers supported services "using its own facilities or a combination of its own facilities and resale of another carrier's services." 47 U.S.C. § 214(e)(1)(A).

[3] *I.e.*, it offers the services supported by the federal mechanism and advertising in the manner required by Section 214(e)(1)(B).

[4] Order at ¶ 178.

A. CLECs Who Purchase Unbundled Network Elements and Satisfy other Statutory Criteria Should Be Eligible to Receive Universal Service Support.

USTA argues that the Commission should deny universal service support "to any eligible carrier that does not offer customers the opportunity to purchase universal service on a stand-alone basis" and further proposes that the stand-alone offering must be priced "at the affordable rate established by the state."[5] According to USTA, this requirement "will prevent carriers from packaging toll, video or custom calling features with universal service in order to "cherry-pick" the high volume, high revenue customers," it will assist states in assuring the affordability of the services defined as universal service, and it will ensure that the universal service fund is "competitively neutral."[6]

In reality, USTA's recommendations fly in the face of competitive neutrality, by unreasonably hindering competitors from leveraging their existing market strengths to begin to overcome the ILEC's enormous incumbency advantages in the local exchange market. It was not Congress' intent, nor should it be the Commission's policy, to shackle new entrants by restricting their marketing flexibility, simply because the Bell Operating Companies ("BOCs") are subject to some transitional limitations on their ability to offer or jointly market certain services. USTA's recommendations also directly conflict with the Commission's determination that section 214(e) contains the exclusive criteria for

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5 United States Telephone Association Petition for Reconsideration and/or Clarification, CC Dkt. No. 96-45 (filed July 17, 1997) at 15 ("USTA Petition").

6 *Id.* at 15.

universal service support eligibility, that the FCC lacks the authority to expand upon those criteria, and that, even if it had the legal authority, such additional criteria "are unnecessary to protect against unreasonable practices by other carriers."[7]

B. CLECs Should Have Access To Universal Service Support on a Direct and Disaggregated Basis.

US West has suggested that CLECs who purchase unbundled loops should be eligible to "participate" in high-cost support for such facilities, but that their participation should be only indirect and their support should be calculated in a different manner than the support flowing to the ILECs.[8] Under US West's proposal, the ILECs would receive universal service support based on the targeted requirements of discrete geographic areas (e.g., census block groups), but would pass the support through to the purchasers of unbundled loops by reducing negotiated loop rates by the state-wide average support the incumbent receives per line.[9] US West's attempt to illustrate its proposal with a specific numerical example is misleading, since that example contains assumptions that may well not match the reality of the underlying pricing structure for unbundled loops at the state jurisdiction.[10]

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7 Order at ¶ 143.

8 Petition for Reconsideration and Clarification of US West, Inc., CC Dkt. No. 96-45, (filed July 17, 1997) at 17 ("US West Petition").

9 *Id.* at 18.

10 US West Petition at 17-18.

Most notably, US West assumes that an ILEC's negotiated or arbitrated loop rate will be a single, statewide average, not (as the Commission has recommended) a set of disaggregated rates reflecting the disparate costs of service in several "zones."[11] US West states that "there is a potential for arbitrage if the high-cost support is targeted based upon a small geographic area while unbundled loop costs are averaged over a larger area."[12] While this potential may exist under the specific circumstances posited by US West, the converse also applies: Competition will be harmed because CLECs will have no financial incentive to enter markets where they will receive only averaged per-line support (which is lower than exchange-specific support) while paying unbundled loop rates that reflect de-averaged (exchange-specific) costs. This is not hypothetical: many states have adopted or are considering a requirement for multiple, cost-deaveraged unbundled loop rates.[13] The Commission's decision that CLECs should have access to universal service support on a direct and disaggregated basis, in the same manner as it is available to the ILECs, is consistent with the pro-competitive policies adopted in the Local Competition proceeding and throughout the *Universal Service* Order, and it should stand.

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[11] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15882-15883 (1996), *vacated in part by Iowa Utilities Board v. FCC*, _ F.3d _, No. 96-3321 (8th Cir. July 18, 1997). While not formally compelled to follow the Commission's pricing guidance in this order, many states are still adhering to that guidance on a voluntary basis.

[12] US West Petition at 18.

[13] *See, e.g.*, MADPU 96-73/74, 96-75, 96-80/81, 96-83, 96-94 – Phase 4, released Dec. 4, 1996 at pp. 60-64.

II. CONTRIBUTORS TO UNIVERSAL SERVICE SUPPORT MECHANISMS SHOULD BE REQUIRED TO COLLECT THEIR CONTRIBUTIONS THROUGH EXPLICIT END USER SURCHARGES.

The Ad Hoc Committee supports the argument made by AT&T Corp. ("AT&T") and US West, Inc. ("US West") that carriers should be required to recover their universal service contributions through explicit surcharges on end users' bills, but the Committee opposes the proposal of those petitioners that the surcharge be assessed on the basis of each carrier's retail telecommunications revenues.[14] Instead, the Ad Hoc Committee urges the Commission to calculate the end user surcharge on the basis of the value each contributor adds to the underlying services (if any) it uses to provide its own services.[15] Such a surcharge would be consistent with the 1996 Telecommunications Act's requirement that universal service support mechanisms be "specific, predictable, and sufficient" as well as "explicit."[16]

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[14] Petition for Reconsideration and Clarification of AT&T Corporation, CC Dkt. No. 96-45 (filed July 17, 1997) at 2-7.The Ad Hoc Committee also disagrees with AT&T on the issue whether intrastate revenues should be included in determining each carrier's contribution obligation. AT&T has argued that only interstate retail revenues should be considered. In its Reply Comments filed January 10, 1997, in this docket, the Ad Hoc Committee argued that a funding base assessed on the basis of interstate and intrastate telecommunications revenues best satisfies the competitive neutrality concerns of the Commission. Ad Hoc Reply Comments in CC Dkt. No. 96-45 (January 10, 1997) at 18. This is especially true because the Commission has decided to assess universal service contributions on the basis of "retail revenues." Because the vast majority of the ILECs' interstate services are wholesale services, an assessment methodology based only on interstate retail revenues would ignore 25% of the ILECs' revenues from regulated services and virtually exempt the ILECs from contributing to universal service support mechanisms. *Id.* at 18-19 & nn. 22, 52.

[15] Stated another way, the surcharge would be based on the difference between what a contributor charges for its services and what it pays other carriers for their services which it uses as an input to provide its own services.

[16] 47 U.S.C. § 254(d), (e).

In the *Universal Service* Order,[17] the Commission permitted contributing carriers to recover their contributions through their interstate rates. Incumbent local exchange carriers ("ILECs") subject to price caps regulation are permitted to add an exogenous cost adjustment to the Common Line basket to reflect their universal service contributions, allocated according to the relative proportion of end user revenues in each basket.[18] Using this methodology, ILECs will be able to recover approximately 85% of their collective $1.35 billion universal service assessment through an exogenous cost adjustment to the Common Line basket.[19]

This method of recovery is not competitively neutral[20] and will result in discrimination against carriers seeking to enter the local services market through total service resale ("TSR"). The Subscriber Line Charge ("SLC") – the only end user rate element in the Common Line basket – is not designed to recover universal service support, and the SLC caps established in the *Access Reform* Order[21] would not, in any event, allow significant recovery of universal service contributions. Therefore, all of the price cap ILECs' universal service

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17 Order at ¶ 829.

18 Order at ¶¶ 772-74; 829-30.

19 Petition for Reconsideration and Clarification of AT&T Corp., CC Dkt. No. 96-45, (filed July 11, 1997) at 3 ("AT&T Petition").

20 The method of *assessing* the amount of a carrier's universal service contribution should be distinguished from the method which the carrier uses to *recover* that contribution. This section of the Ad Hoc Committee's Comments is limited only to the latter.

21 *Access Charge Reform,* First Report and Order, CC Dkt. No. 96-262, FCC 97-158 (released May 16, 1997).

contributions – though based on retail revenues – will be flowed through to the IXCs as charges for access services (*i.e.*, charges on wholesale services) in the form of the presubscribed interexchange carrier charge ("PICC") and the Carrier Common Line Charge ("CCLC").

According to AT&T, the net result of this cost-shifting will be that only $.18 billion of the price cap ILECs' $1.35 billion universal service contributions will remain for recovery through ILEC retail services, while the IXCs will absorb $1.17 billion of the ILECs' contributions, in addition to the $2.25 billion the IXCs themselves will be assessed directly, based on their own retail revenues. This result is clearly at odds with the requirements of Section 254(b)(4) of the Act that all telecommunications service providers make equitable and nondiscriminatory contributions to support universal service.[22]

Moreover, unlike the ILECs, CLECs entering the local services market through TSR, and not providing interstate access services to IXCs,[23] would be unable to recover their universal service contributions from wholesale customers through access charges.[24] These CLECs would therefore be required to absorb their universal service contributions or pass them through to their retail customers, thereby placing them at a competitive disadvantage relative to the ILECs. By favoring one class of local carriers (the incumbents) over another (new entrants), the Commission's decision to allow ILECs to recover their

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22 47 U.S.C. § 254(b)(4).

23 See AT&T Petition at 5, n. 6.

universal service contributions through the common line basket is inconsistent with the non-discrimination requirement of Section 254(b)(4).

An explicit end user surcharge is preferable to a system whereby universal service contributors can recover their contributions through higher interstate rates because, among other things, it would promote accountability. As the Ad Hoc Committee and others have argued in their comments in this docket,[25] an explicit surcharge on all end users' bills will create public pressure to keep overall subsidy levels reasonable and to make each end user aware of his own share of the universal service cost burden. End users ultimately pay for universal service even if contributors simply pass through their contributions in the form of higher rates; therefore, they have a right to know, and an interest in knowing, how much they are actually paying for universal service.

The imposition of an end user surcharge in no way requires that universal service contributions be assessed on the basis of retail telecommunications revenues. The allocation of contribution responsibility and the manner in which contributions are actually recovered from end users are two distinct and unrelated issues. Therefore, while the Ad Hoc Committee endorses the petitions that have advocated a mandatory end user surcharge as the means for recovering universal service contributions, it does not concur with petitioners that

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[24] IXCs would purchase access from the ILECs to serve the CLECs' customers. *Id.*

[25] *See, e.g.*, Reply Comments of the Ad Hoc Telecommunications Users Committee (filed Jan. 10, 1997) at 16-17; AT&T Comments (filed Dec. 19, 1996) at 8-9; USTA Comments (filed Dec. 19, 1996) at 22; Bell Atlantic Comments (filed Dec. 19, 1996) at 8-10; Ameritech Comments (filed Dec. 19, 1996) at 34-35.

have supported assessing that surcharge based on a contributor's retail telecommunications revenues. Instead, the Ad Hoc Committee believes the most competitively neutral assessment methodology is the value added approach it advocated in its earlier comments.

III. THE COMMISSION SHOULD ADDRESS ILEC RECOVERY OF EMBEDDED COSTS ONLY IN THE PENDING HISTORICAL COST PROCEEDING, NOT HERE.

In its Petition for Reconsideration, US West stated that

> ILECs should be compensated for their historical embedded costs incurred under previous forms of regulation. Recovery of these costs can be addressed in the high-cost fund directly or alternatively in the Commission's historical cost proceeding.[26]

It is not appropriate to address ILEC recovery of embedded costs at the present time. The Commission has already determined that the complicated, contentious issues associated with embedded cost recovery are best addressed in a separate proceeding. Thus, it would be inappropriate, duplicative, and pointless for the Commission to reconsider its decision not to address the matter of ILEC embedded cost recovery here.

CONCLUSION

For the foregoing reasons, the Commission should reconsider and clarify the indicated portions of the *Universal Service* Order to state that (1) CLECs who purchase UNEs and satisfy other statutory criteria should be eligible to receive universal service support; (2) CLECs should have access to universal service

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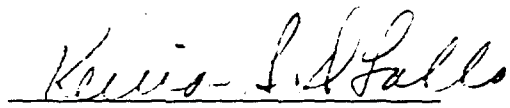
[26] US West Petition at 11.

support on a direct and disaggregated basis; (3) contributors to universal service support mechanisms should be required to collect their contributions through explicit end user surcharges; and (4) the Commission should address ILEC recovery of embedded costs only in the impending historical cost proceeding, not here.

Respectfully submitted,

AD HOC TELECOMMUNICATIONS
USERS COMMITTEE

By: 

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Certificate of Service

I, Kurt A. Kaiser, hereby certify that true and correct copies of the preceding Consolidated Comments of the Ad Hoc Telecommunications Users Committee on Petitions for Reconsideration in CC Dkt. No. 96-45, were served this 18th day of August, 1997 via hand delivery to the Secretary's Office of the Federal Communications Commission and upon the following:

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